



POLICE IN PUNJAB – A PROTECTOR OR A VIOLATOR?

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ABSTRACT

It is an evident fact that for the proper functioning of any democratic society, every organ of the State is expected to be disciplined and accountable to the people. The same applies to Police also or we can say that it applies more to Police, which is primarily entrusted with the task of maintaining public order and enforcing regulations in order to combat crime. But the pattern of police abuses in states like Chhattisgarh¹, Andhra Pradesh², Jharkhand³, Bihar, Manipur, Jammu and Kashmir⁴, Gujarat, Kerala and also in Punjab⁵ (both during the insurgency and post insurgency period) calls for a serious contemplation and opens the doors of new discourse. The gravity of the problem also demands to discuss the effectiveness of available mechanism established for safeguarding human rights of the people in the State. It also calls for assessing the role of political will in terms of containing the said problem in India and particularly in the State of Punjab.

KEY WORDS: Police, Insurgency, immunity, impunity, AFSPA, TADA.

The issue of human rights has emerged to be an issue of increasing importance and keeps touching the concerns of everybody whosoever comes to be known as a human being surpassing the boundaries of Politics, Sociology, Anthropology, Psychology, Nation, culture, religion, language and so on. According to United Nations, "These rights are all interrelated, interdependent and indivisible."⁶ Human rights can be defined as those rights, which are so basic to us that we cannot live as human beings without them. They include our basic demand for life, inherent dignity, liberty, justice and peace. According to United Nations, "Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups".⁷ Before touching upon the issue of human rights and the role of police in India and in Punjab particularly, we need to focus on the concept of human rights through its historical journey and also the idea of policing through its developmental phases.

Human Rights - A Historical Perspective: The oldest origin of the concept can be traced back to the Greek period. Pythagoras appeared first as the one who proposed the idea of justice. He regarded justice with equality and believed in the existence of the State till it promotes and idea of equality. Heraclitus stressed on the idea of harmony between the universal divine laws and the laws of the city. Sophocles through his play *'Antigone'*⁸ advocated the basic right of humans i.e. the right to honoured funeral. Plato through his works like *Republic*, *Crito*, *Apology*⁹ and Protagoras took the idea further by taking society as an ethical unit, giving everybody his share, rejected the racial boundaries and the availability of basic rights like food, shelter and education with equality to every person. Aristotle also championed the cause of human rights by making it a duty of the state to provide a man a good life and stated that the state continues to be there as long as it provides services to the people for their betterment. Roman thinkers like Cicero, Seneca contributed for the same. The former through his works like *De Republica* and *De Legibus* asserted a greater responsibility to the government to provide every service to its people as is required for their good. He also gave people an opportunity to change the same if it fails to fulfill the aspirations of the people. The medieval period which brought the concept of Christian theology and under its impact the thinkers like St. Augustine, Thomas Aquinas talked of human dignity and equality.

The divine bases of the medieval period got transformed into reason and logic in the 17th and 18th century with the writings of Hugo Grotius, Pierre Bayle, Thomas Hobbes, Samuel Pufendorf, John Locke and Jean Jacques Rousseau. Through the writings of these contributors the idea of liberty, conscience, restoration of personal beliefs, peace, security and preservation of social life. They also raised their voice against despotism, slavery and torture. The raising voices for the rights of man shook the world and gave birth to the developments like 1688's Glorious Revolution, 1787's American Revolution, 1789's French Revolution. The idea of human rights got another push in the period of 19th century. In this period the theory of natural law was replaced on account of being termed as vague and confusing. The hedonistic individualism and analytical positivism became the bases of real law. Thinkers like Immanuel Kant, Jeremy Bentham, August Comte and John Austin became the transformers of this period.

With the rise of 20th century came an era of revival of natural law once again seeing the destruction of mankind through the anti – human waves like Nazism and

Fascism and the two world wars. The positivism of 19th century was criticized as being lacking on ideal and moral fronts. The 20th century saw the revival of natural law as being loaded with values and morality.

The present day discourse on human rights is based on the actual realization of human rights. The scholars like Hannah Arendt, John Helis, Roland Dworkin, Mc Dougal, Lasswell and Chen became the champions of this age by associating human rights with the human dignity, respect, power, health, skill and enlightenment. The world also witnessed the birth of United Nations and through it the most important advancements like the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights. With the birth of these important advancements coupled with paralleled developments, the ever increasing awareness of humanity on different fronts are deeply engaged in giving new visions and sights to the whole concept of human rights at large.

The concept of police: Police have always occupied a significant position in the prevention of crime and establishing peace and order in the society. The origin of police can be traced back to the time of early human history. When with the passage of time small serving groups got organized in the form of tribes, set their rules and established a specialized agency with the task of preserving and enforcing these tribal laws. This specialized agency was, perhaps, a kind of police. We also find the proofs of police in the Roman period through the provision of watchmen who went for patrols in the Roman cities. The Greek tradition has also the concept of 'Police' through the Greek words 'Polis' (city). Similarly the Latin roots of the term Police can be traced through the word 'Politia' means the condition of a 'Polis' or 'State'. The French connection of police can be found through the word 'Policer' means the power of the people. It is believed that the word 'police' was imported from France to England in the early 18th century. The Police Act of Parliament of England in 1929¹⁰ used the term 'police' for the first time.

In India the existence of police is as old as the Indian civilization is. The Scripture 'Ramayana' mentions about policemen, spies and guards. The Vedic and Harappan civilization also mentioned the existence of police. "The concept of rule of law and the administration of justice has been known to exist in India ever since Vedas came to be recognized as the very epitome of dharma."¹¹ In *Rig Veda* we find the mention of thieves and robbers.

'Kautilya's Arthashastra also defines it in dandniti. "It is possible that no modern CID in any country has ever been so highly organized as the system of espionage described by Kautilya." Apart from Kautilya's 'Arthashastra', Mahabharata, Manusmriti and Shukracharya's Neetishashtra also talk of police as an instrument of danda. Manusmriti was the first to describe the Hindu legal system and it also mentioned crimes of 18 types like theft, robbery, violence, gambling and betting etc.

Fahein, a Chinese Buddhist explained that during the reign of Chandragupta Vikramaditya, there was a peaceful and Crime free system of administration. In Mughal period the system of police is found with the provisions of Subedars or Governors, Faujdars, Kotwal and Darogas. After the collapse of Mughal system and the establishment of British rule in India they abolished the establishment of Faujdars and Darogas. The British appointed a Police Commission in 1859 and the same proposed 'The Police Act of 1861'¹² which still remains in force in India today. It brought a uniform pattern of police in India. After independence the structure of Police has not been changed much and kept similar to the one found

in the British period. The Constitution of India describes 'Police' as a state subject and it falls under the seventh schedule under article 246. Apart from this, articles 309, 310 and 311 also deal with police in India. Generally in all the states police is considered to be one of the major law making/enforcement agencies to protect the human rights apart from Parliament, Judiciary and Human Rights Commission etc. India as a liberal democratic State has established different methods to protect human rights like written Constitution with the provision of fundamental rights, directive principles, an accountable Parliament and executive, the independent Judiciary and various law enforcement bodies.

But despite all the arrangements, India has witnessed a series of violation of human rights in almost all the parts of our country. The biggest irony here is that law enforcement agencies who have been assigned the job of protecting the people are becoming the biggest violators of human rights of people.

Human rights and the Police – A Study of mutual interactions in India and Punjab: As mentioned above that every democratic society calls for the discipline and accountability from each of its organ and Police is also expected to perform its real task i.e. maintaining public order and enforcing regulations for combating crime. But Police in India has failed to observe its prime task i.e. to maintain the order and the protection of human life and liberty. The works of thinkers like Sanjoy Hazarika, Neelesh Misra, Gautam Ghosh, Suhask Chakma, Rahul Pandita, Ujjwal Kumar Singh, Subhas Chander Pattanayak speak volumes of police atrocities in India.

The atrocities of Police touch the lives of people through many ways. Though India has signed the United Nations Convention Against Torture in 1997 but has not ratified it. Through the annual reports of NHRC it has been found that cases regarding the misuse of power by the police are on the rise with the passing of each year. The following table can be presented here in this regard:

Cases of custodial deaths registered by NHRC in India (1993-94 to 2006-07):

Years	Deaths in custody.
1993-1994	62
1994-95	162
1995-96	444
1996-97	888
1997-98	1012
1998-99	1297
1999-2000	1093
2000-2001	1037
2001-2002	1277
2002-2003	1340
2003-04	1462
2004-05	1493
2005-06	1730
2006-07	1618

Source: Annual Reports of National Human Rights Commission.

The above table shows the worst form of human rights violations i.e. custodial deaths by the police in India. The table shows that NHRC reported only 62 cases of custodial deaths during 1993-94 but in the very next year an alarming increase with a total 162 cases was seen in the year 1994-95. The number of custodial deaths was 444 in 1995-96 which got doubled i.e. 888 in just one year in 1996-97. During 1997-98 1012 deaths were reported which was followed by 1297 complaints during the year 1998-99 and 1093 complaints during 1999-2000. In 2000-01, there was seen a decrease in the number of complaints, when NHRC registered 1037 cases, which was followed by 1277 cases in 2001-02, 1340 in 2002-03, and 1462 in 2003-04, again in the coming years, the NHRC registered 1493 cases in 2004-05, and 1730 cases in 2005-06, 1620 cases in 2006-07.

The annual reports of *National Human Rights Commission*¹⁴ and *Asian Centre for Human Rights*¹⁵ also speak of blatant misuse of power by the police in India. According to the report of Amnesty International 2015/16 "Abuses by armed groups continued to threaten civilians, but a historic peace framework agreement was reached in Nagaland. The criminal justice system remained flawed, violating fair trial rights and failing to ensure justice for abuses. Extrajudicial executions and torture and other ill-treatment persisted."¹⁶

After analyzing the situation at the national level we also need to assess the situation in Punjab also. According to the reports of PSHRC from 1997-98 to 2003-04¹⁷ clearly show that police appears to be the biggest violator of human rights in Punjab. There is a non-availability of reports after this period as they have not been passed by the Punjab legislative assembly after this. So looking at the last published report of PSHRC we come across the following data:

Annual report of PSHRC 2003-04

Incident Name	No. of Cases
Children	10
Health	145
Jail	346
Judiciary	66
Mafias/Underworld	3
Labour	80
Minorities/SC/ST	8
Police	7259
Pollution/Ecology/Environment	54
Refugees/Migrants	0
Religious/Communal Violence	5
Service Matters	406
Women	238
TADA	0
Miscellaneous	4031
Deference Forces	8
Para-Military Forces	5
Juvenile/Beggar's homes	0
SC/ST/OBC	57
Foreigners/N.R.I.s	2
Riots	5

In addition to these reports many reports coming from the various media houses also speak of blatant misuse of power by the police in Punjab like the case of assault on peaceful demonstration of Sikh bodies,¹⁸ assault and molestation of woman¹⁹ atrocities on dalit people present a shocking picture of the attitudinal character of police towards people in Punjab. It also raises a big question if police is meant to protect the people or to torture the people. The use of blatant power and complete impunity and immunity had already been seen by the people of Punjab during the insurgency and post insurgency period with the use of Acts like Armed Forces Special Powers Act, Terrorist and Disruptive Activities Act, Disturbed Area Act etc. But during the time of peace if the situation still continues to be the same it really poses a great threat to the liberty and freedom of people of Punjab. It also symbolises the failure of the government machinery i.e. Punjab State Human Rights Commission in this regard due to many causes like the weak position of the commission, only ornamental powers with the commission, non-availability of the staff, poor infrastructure etc.

Concluding Remarks:

"To deny people their human rights is to challenge their very humanity". -- Nelson Mandela. This statement is really true as the State is expected to provide everything which is for the sake of the welfare of its people and the availability of the human rights to the people tops the chart amongst these requirements. Undoubtedly the use of force and torture by the police is a clear negation of human rights of the people but police alone cannot be held responsible for it many other factors like lack of awareness amongst masses, lack of education, continuity of colonial mind set amongst the police officials, tough and ever challenging working conditions of police officials, lack of human rights education in police personnel and unenthusiastic approach of the people's representatives work together to make such a situation prevail in the state of Punjab. The adoption of measures like strong will of the political masters, awareness of the people, spread of education, more training programmes for the police, better service conditions for them, more sensitization of police officials about human rights, effective and strong role of PSHRC, independent role of media, continuous working of the human rights groups, N.G.O.s, human rights activists, human rights lawyers in a combined approach can only bring us fruitful results in future not only for the state of Punjab but also for the whole of India.

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